IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1367 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? - **No.**

2 To be referred to the Reporter or not ? - **No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? - **No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**

5 Whether it is to be circulated to the civil judge ? - **No.**

==========

SHRI DHANRAJ @ DHANO VAGHUMAL SINDHI - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR HR PRAJAPATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 01/12/2005

ORAL JUDGMENT

1.Shri Dhanraj @ Dhano Vaghumal Sindhi, petitioner has filed this petition under Article 226 of the Constitution of India for quashing and setting aside

the order dated 21/7/2005 passed by the respondent no.2 under the provisions of Section 56 (b) of the Bombay Police Act, 1951 externing the petitioner for a period of two years and further be pleased to quash and set aside the order passed by respondent no.1 dated 22/9/2005 by which the appellate authority has confirmed the order of externment in this behalf. Petition was filed on 4/10/2005.

2. My brother Mr.Justice A.S.Dave, has issued rule on 11/10/2005 which was returnable and therefore, this matter has came up for hearing to this Court.

3. Heard, Mr.Prajapati, learned advocate for the petitioner in this behalf. He has stated that the Assistant Commissioner of Police has issued notice in May, 2004 to the petitioner as to why he should not be externed from Ahmedabad City, Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana for a period of two years. The petitioner has appeared before the authority and submitted his reply on 15/12/2004 denying all the allegations. Petitioner examined seven witnesses in his defence.

4.Respondent no.2, the Deputy Commissioner of Police has passed order of externment, externing the petitioner from Ahmedabad, Gandhinagar, Kheda and Mehsana for a period of two years on 21/7/2005.

Being aggrieved and dissatisfied with the same, the petitioner preferred an appeal against the order of externment before the respondent no.1 i.e. The Dy. Secretary, Home Department, Sachivalaya, Gandhinagar. The respondent no.1 pleased to dismiss the appeal of the petitioner on 22/9/2005.

5.Though there are several grounds, however learned advocate for the petitioner desires to urge only one ground that the order of authority is bad in law as the authority originally passed the order after unavoidable and unjustified delay in this behalf. In support of the same, he has relied upon the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another, in Special Criminal Application No.1451 of 2005 decided on today.

6.On the other hand, Mr.L.R.Pujari, learned APP stated that in this case, as the authority was busy, the

authority could not pass the order. Except that, no other reasons have been stated by the learned APP. No affidavit has been filed in this behalf showing as to why there is a delay in passing the order.

In view of the aforesaid reasons, Special Criminal Application No.1367 is allowed. Order of externment dated 21/7/2005 is quashed and set aside and order dated 22/9/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

(ila)